

April 2014

Quarterly E-newsletter

Hon. Evelyn Z. Wilson, Chair Hon. W. Lee Fowler, Vice Chair Scott M. Schultz, Executive Director



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Commission Developing LSI-R Cutoff Score Decision

The Commission is moving closer to providing Level of Service Inventory-Revised (LSI-R) cutoff scoring to stakeholders. In 2013, the legislature added this duty in K.S.A. 74-9101(b)(21), which provides that the Commission:

"be authorized to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. The commission shall periodically review data and make recommended changes."

To address this requirement, a LSI-R Subcommittee was formed. Members of the Commission participating are: Hon. Evelyn Wilson, Chair; Betsy Gillespie; Chris Mechler; and Ray Roberts. The subcommittee has met six times to plan procedures for data collection and develop the project. Dr. Alex Holsinger, Professor of Criminal Justice and Criminology at the University of Missouri-Kansas City, has been enlisted to assist in the study.

In March, assessment data was collected statewide from court services and community corrections. It is being analyzed and will be used to establish cutoffs. Dr. Holsinger plans to present his findings to the subcommittee on April 21, 2014 at 9:00 a.m. in the Senate Room of the Jayhawk Tower in Topeka. The public is invited to attend.

2014 Legislative Update

The Commission recommended four bills for legislative consideration this year, ranging from Justice Reinvestment Act clean-up to misdemeanor criminal history scoring. Please note that the bills discussed in this article have not yet reached the Governor and are not law. Upon returning from their spring break, the legislature will begin the veto session on April 30 and continue consideration of some of these matters.

S Sub for HB 2448

The bill was originally drafted as HB 2495. Now S Sub for HB 2448, the legislation would adjust or clarify several provisions created or amended by the Justice Reinvestment Act, which made numerous changes to sentencing, probation, and postrelease supervision statutes last year. Specifically, the bill would:

- Move the provision allowing a judge in most felony cases to impose up to 60 days in a county jail upon revocation of a probation sentence or community corrections placement from the authorized dispositions for sentencing statute to the statute governing probation, community corrections, suspended sentence, and nonprison sanction violations, and clarify that this provision is separate and distinct from other sanctions provided for violation of release conditions, shall not be imposed at the same time as the other sanctions, and shall be served concurrently if the offender is serving concurrent probation terms;
- ◆ Add a similar "up to 60 day" sanction provision for misdemeanor violators, and specify that such sanctions shall be served concurrently if the offender is serving concur-



rent probation terms;

- Clarify that the intermediate sanctions established in HB 2170 that may be imposed by a court services officer or community corrections officer are applicable only if the original crime of conviction was a felony, with the exception of felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions;
- Provide that for felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions, the sanctions for misdemeanor violators would be imposed;
- Add a two- to three-day confinement provision for misdemeanor violators, similar to that allowed for felony violators:
- Clarify that the 120-day and 180-day incarceration intermediate sanctions shall not be served by prior confinement credit;
- Specify that intermediate sanctions are to be imposed concurrently if the offender is serving multiple probation terms concurrently:
- Add a retroactivity provision to clarify that the violation sanctions shall apply to any violation occurring on or after July 1, 2013, regardless of the date the underlying crime was committed or the offender was sentenced for the underlying crime; and
- Amend a provision implemented by HB 2170 allowing early discharge of low risk offenders from supervision to change the standard for denial by the court of such discharge from "substantial and compelling reasons for denial" to "clear and convincing evidence that denial . . . will serve community safety interests."

The Conference Committee Report on the bill is awaiting adoption in the House.

S Sub for HB 2655

The Commission approved amendment of a veteran's bill that would allow the district court to order SB 123 substance abuse treatment to an offender that was deemed to have a combat-related mental illness. The bill enacts new law and amends existing statutes to allow a defendant at the time of conviction or prior to sentencing to assert that the offense was committed as a result of mental illness, including post-traumatic stress disorder, stemming from service in a combat zone while in the U.S. Armed Forces. Under the provisions of the bill, the court must hold a hearing to determine the following:

- Whether the defendant served in a combat zone while in the U.S. Armed Forces, as proven by a certification by the executive director of the Kansas Commission on Veterans' Affairs;
- Whether the defendant has separated from the armed forces with an honorable discharge or a general discharge under honorable conditions;
- Whether the defendant suffers from a mental illness; and
- The mental illness was caused or exacerbated by service in a combat zone.

If the court determines the defendant has met the criteria established by the bill and the defendant's current crime and criminal history fall within a presumptive nonprison category under the sentencing guidelines, the court may order the defendant to undergo treatment. The bill allows the court to order the defendant to undergo either inpatient or outpatient treatment at any treatment facility or program operated by the U.S. Department of Defense, the Federal Veterans' Administration, and the Kansas National Guard.

If the court determines the defendant is eligible for treatment under the above provisions and that the defendant meets the requirements for treatment under 2003 SB 123, the SB 123 provisions would apply, except the court may order treatment by the providers listed above in lieu of participation in a certified drug abuse treatment program.

The bill was amended several times, passed both houses and is currently awaiting consideration by the Governor.

HB 2497

The bill modifies the procedures for the transfer of offenders who have been placed on community supervision programs from one district court to another. The originating court may either retain jurisdiction of the offender or transfer jurisdiction of the offender to the receiving court. If supervision is transferred, the originating court may initiate a transfer order which must include the journal entry of sentencing, all documents relating to the placement of the offender on community supervision, and the offender's written consent to abide by the rules of the receiving court.

Due to lack of support in the House Corrections and Juvenile Justice Committee, the bill did not receive support to be recommended favorably for passage to the full House and died at Turnaround Day on February 28.

H Sub SB 19

Originally HB 2703, the bill amends the statute governing the determination of an offender's criminal history to establish a procedure for classifying out-of-state misdemeanor convictions. The comparable Kansas offense would be used to classify the out-of-state conviction as a class A, B, or C misdemeanor. If the comparable Kansas offense is a felony, the conviction would be classified as a class A misdemeanor. If there is no comparable Kansas offense, the conviction would be classified as a class C misdemeanor.

While non-controversial by itself, the Commission bill was amended into one containing an aggravated battery by strangulation proposal which did meet with contention. Accordingly, its progress has slowed and it has not yet been placed on the House calendar for a floor vote.

Forms Modification

Staff of the Commission anticipates that upon signing into law of these bills or the additional 53 that staff is tracking this year, the necessary modifications to the Presentence Investigation Report, Journal Entry of Judgment, and Journal Entry of Probation Violation Hearing will be proposed shortly for approval by the Forms Subcommittee and the full Commission. Applicable changes will occur on or about July 1, 2014 and will be posted on the Commission's website.



Kansas Sentencing Guidelines 2013 Desk Reference Manual (DRM)

The Sentencing Commission is pleased to announce that the 2013 Kansas Sentencing Guideline Desk Reference Manual (DRM) is available for purchase! Included with the manual is a laminated sheet with both HB 2170 Graduated Sanctions Flowchart and K.S.A. 21-5705 - Drug Distribution Crimes Flowchart. Please <u>click here</u> for more details. 2012, 2011 & 2010 Desk Reference Manuals (DRM) are still available.



NOTICE TO ALL PARTICIPATING STATE LAW ENFORCEMENT AGENCIES:

The Kansas Sentencing Commission will no longer collect Arrest-Related Deaths data because the program has been discontinued by the Bureau of Justice Statistics. We will inform you if the program resumes.

Thank you for your participation and contribution to the Arrest-Related Deaths Reporting Program.



The FY 2014 KDOC Inmate Custody Classification Projection report has recently been released. The report represents the specific type of prison beds needed by the state. Over the ten-year forecast period, for males, the percentage distributions of medium high beds will increase; the medium low beds will decrease while unclassified, special management, maximum and minimum beds will remain almost unchanged. For females, the percentage distributions of unclassified beds will increase; while special management, maximum, medium high and medium low beds will slightly decrease. The percentage of minimum beds will remain unchanged. The seven-page report may be found here.



E-mail your Journal Entry (JE), Probation Violation Hearing (PVJE), or PSI forms as an alternative to mailing them?

Just like everyone these days, we are always looking for ways to cut costs. Save paper and postage!

E-mail to:

chrisc@sentencing.ks.gov

If you email JEs please include the following:

- **▶** JE
- ► PSI
- ▶ Date of Birth
- Criminal History worksheet

If you have ANY questions (785) 296-0923.

2003 Senate Bill 123 K.S.A. 2013 Supp. 21-6824

Provides for community supervision (in lieu of incarceration) and mandatory substance abuse treatment for a defined target population on non-violent adult drug offenders who have been convicted of a drug offense under K.S.A. 2013 Supp. 21-5706.

GOAL: To provide community intervention and the opportunity for treatment to certain offenders with substance abuse problems in order to address more effectively the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

☼ FY 2014 Prison Population Projections ☼

Click here to view the entire report



2013 Kansas Sentencing Guidelines – forms

All 2013 Forms are effective 7/1/2013

Click here to view all 2013 forms

Journal Entry of Judgment (JE) (latest revision date 11/18/2013) Probation Violation Hearing (PVJE) (latest revision date 11/18/2013) Presentence Investigation Report (PSI) (latest revision date 2/21/2014)

Please note:

Under each form of the **highlighted version** we have provided and an explanation document describing the latest changes.

Please don't hesitate to call with any questions.

Senate Bill 123 News

-SASSI Training- Salina, Ks ~ June 6, 2014-

For more information click here.



Insurance billing changed in January 1, 2013. For more information click here.

Observance of Length of Stay Caps when Billing for SB 123 Treatment letter

The Offender Insurance Coverage Report Form

Treatment Providers: Please remember:

- Send All ASIs to us (KSC).
- In addition to monthly invoicing, the KSC accepts weekly or bi-weekly invoices for faster processing.

Community Corrections:

- If you receive an ASI please forward it to us (KSC).
- Our office gladly prefers invoices emailed to jenniferd@sentencing.ks.gov, or faxed to 785-296-0927 in care of Jennifer.

SB123 questions—

Please email Jennifer Dalton, <u>jenniferd@sentencing.ks.gov</u> or Sean Ostrow, <u>seano@sentencing.ks.gov</u>





Kansas Criminal Justice System Resource Directory

If <u>your</u> information in this <u>Resource Directory</u> has changed, please use this revision form to let us know.

Thank you to those who help us keep your information accurate!

Last revised 3/27/14

January - March Case Law Updates

104115 - State v. Stevenson - March 28, 2014 - Reversed and Remanded (Search and Seizure)

108597 - State v. Ramey - March 28, 2014 - Reversed and Remanded (Issues with Counsel)

104485 - State v. Santos-Vega, March 21, 2014 - Reversed and Remanded (Jury Instructions)

<u>107961</u> - State v. Mosher - March 14, 2014 - Affirmed (Sentencing/General Issues, Consecutive and Concurrent Sentencing)

108130 - State v. Taylor - March 14, 2014 - Affirmed in part, reversed in part - (Appeals, Constitutional Issues)

106103 – State v. Schumacher - March 7, 2014 - Affirmed (Evidentiary Issues, Sentencing/Jessica's Law)

<u>106166</u> – State v. Williams - March 7, 2014 - Affirmed in part, vacated in part (Postrelease, Constitutional Issues, Sentencing/Jessica's Law)

107768 – State v. Morris - March 7, 2014 - Affirmed (Plea Agreements)

102495 - State v. Hall - February 28, 2014 - Affirmed (Sentencing/Fines, Fees and Restitution)

<u>102981</u> - State v. Charles - February 28, 2014 - Affirmed in part, vacated in part (Sentencing/Fines, Fees and Restitution, Criminal History)

103304 - State v. Frierson - February 28, 2014 - Affirm (Sentencing/Fines, Fees and Restitution, Evidentiary Issues)

<u>105625</u> - State v. Dean - February 28, 2014 - Affirmed in part, vacated in part and remanded (Sentencing/Jessica's Law, Sentencing/Departures)

<u>105678</u> - State v. Brown - February 28, 2014 - Conviction affirmed, sentence affirmed in part and vacated in part (Appeals, Postrelease)

105934 - State v. Kelly - February 21, 2014 - Affirmed (Plea Agreement, Criminal History)

109123 - State v. Hankins - February 21, 2014 - Reversed and remanded (Plea agreements, Criminal History)

103915 - Miller v. State - February 14, 2014 - Affirmed Court of Appeals ruling (Issues with Counsel, Jury Instructions)

106273 - State v. Huddleston - February 14, 2014 - (Evidentiary Issues)

107814 - State v. Franco - February 14, 2014 - Affirmed (Jury instructions, Evidentiary issues)

109292 - State v. Shelly - February 14, 2014 - Appeal dismissed (Appeals)

<u>105613</u> - State v. Clark - February 7, 2014 - Convictions affirmed, sentences vacated in part (Sentencing/Mandatory Minimums, Postrelease)

105115 - State v. Dull - January 31, 2013 - Affirmed (Sentencing/Jessica's Law, Appeals)

<u>102452</u> - State v. Brooks - January 24, 2014 - Conviction affirmed (Evidentiary Issues, Jury instructions)

106214 - State v. Maestas - January 24, 2014 - Affirmed (Sentencing/General Issues, Constitutional Issues)

105091 - State v. Remmert - January 17, 2014 - Affirmed (Sentencing/Jessica's Law, Evidentiary Issues)

105872 - State v. Littlejohn - January 17, 2014 - Affirmed (Jury Instructions, Evidentiary Issues)

<u>105809</u> - State v. Akins - January 17, 2014 - Reversed and Remanded (Issues with Counsel, Appeals, Jury Instructions)

109472 - State v. Tims - January 3, 2014 - Reversed and Remanded (Criminal History, Sentencing/General Issues)